BEFORE THE APPEALS BOARD FOR THE KANSAS DIVISION OF WORKERS COMPENSATION

DOUG A. JONES Claimant	
VS.)))
ALLEN OTT WELDING, INC. Respondent)
AND	
FARM BUREAU MUTUAL INSURANCE COMPANY Insurance Carrier)))

ORDER

Claimant appeals from an April 24, 1995 Order by which Administrative Law Judge Alvin E. Witwer denied claimant's application for preliminary benefits.

ISSUES

Claimant asks the Appeals Board to review the finding that claimant has failed to meet his burden of showing that he suffered an injury arising out of and in the course of his employment.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record and considering the arguments of the parties, the Appeals Board finds as follows:

- (1) The finding by the Administrative Law Judge that the injury did not arise out of and in the course of employment is a finding subject to review on appeal from a preliminary order. K.S.A. 44-534a.
- (2) The Appeals Board finds that the claimant has not shown by a preponderance of the credible evidence that he suffered accidental injury arising out of and in the course of his employment on September 21, 1994 as alleged.

Claimant testified that he suffered an injury on September 21, 1994 while pulling a rope as he stood on a catwalk one hundred feet (100') in the air at the Ottawa Co-op.

Respondent offers evidence of a witness who was present on the day of the accident and indicates that claimant was not the one who either pulled up or lowered the box being repaired. He also contradicts claimant's testimony that he notified respondent of the incident. Finally, the witness had visited claimant's home when claimant had missed work. Claimant did not mention an on-the-job injury. The decision by the Administrative Law Judge implies an assessment of the credibility of witnesses who testified before him. The Appeals Board agrees and finds that the Order denying benefits should be affirmed.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Preliminary Order of Administrative Law Judge Alvin E. Witwer dated April 24, 1995 should be, and the same is hereby, affirmed.

IT IS SO ORDERED.
Dated this day of July 1995.
BOARD MEMBER
BOARD MEMBER
BOARD MEMBER

c: James F. Stanley, Kansas City, Missouri Jeffrey S. Austin, Overland Park, Kansas Alvin E. Witwer, Administrative Law Judge David A. Shufelt, Acting Director